NUMB. 167

The Daily Gazetteer.

FRIDAY, JANUARY 9. 1736. N°.167.

The Art of managing a Controverſy, as practiſed by Fog *on the Subject of the* Laws of England.

AM heavily complained of by *Fog* in his laſt Paper, for having accuſed him ſome Years ſince of a *Putney Bridge* ASSASSINATION PLOT, and frightened his Readers with a Story of Raw-head and Bloody-bones, in the *Medal* which JAMES *the Second* caus'd to be ſtruck on the Execution of *James* Duke of MONMOUTH, and *Archibald* Earl of ARGYLE.

I confeſs, that to me nothing ever more ſhewed the butcherly Spirit and the bloody Diſpoſition of the *Jacobite* Faction, than the *Aſſaſſination Papers* of this their ſtanding Advocate, and the *Medal* above-mention'd of their *aſſaſſinating* King. But *Fog* hath the Confidence to deny both, and to tell me, *He takes it for granted, that I don't expect to be believed.*

THERE cannot be a better Reply to his Cenſure of the Government, and his Libel on the Laws of the Kingdom, which he charges as *ſanguinary* and cruel, beyond the Example of all Nations, than to ſet the *Butcheries* of the Times, which he adores, in Oppoſition to the Severities of thoſe Reigns which he vilifies. And when I obſerve, that his greateſt Complaint is founded in the *Frequency of Executions at Tyburn*, I cannot but think he had better look back to the *Murders* which were formerly committed on *Tower Hill*. When he laments the Fate of *common Malefactors*, and imputes the Death of *Highwaymen* to the Burden of Taxes and the Rigour of Penal Laws, he might better beſtow his Commiſeration on ſome of the beſt and greateſt Men this Country ever produced, who were ſlaughtered by the Rage of Tyranny, and were Victims to the cruel Ambition of a lawleſs, arbitrary Court: And when he takes ſo much Pains to raiſe Pity for *Macray* and *Wreathock*; when he impeaches the Lenity of an *Engliſh* Government, for ſpilling the Blood of *common Banditti*, he might much more properly bring the Charge againſt thoſe villainous Conſtructions and monſtrous Perverſions of Law, which, contrary to its known Rules, and in Violation of all Liberty, Safety and Juſtice, brought the Lord RUSSEL and Sheriff CORNISH to the Block for no other Crimes, than being hated by a Court, which was hateful to all good Men.

IF this were ſhewn in its true and natural Light, he would not be able to terrify one Man in *Britain* with the Severity of Penal Laws, when every Man ſees them directed againſt their proper Objects, and employ'd for the Preſervation of honeſt and uſeful Men.

NAY it would make this Government amiable to the whole People, who muſt ſee, that in ſuch former Reigns, the Laws were ſtrained to the Deſtruction of illuſtrious Innocence; whereas the only Complaint at this Time, is, that the Laws are executed in cutting off common *Newgate Birds*, notorious *Rogues*, and *Robbers of the Highway*.

THIS is the Difference between Mr. *Walſingham* and *Fog*; the laſt is unmoved at the bloodieſt Annals of *Engliſh* Hiſtory, but melted into Tears at an *Old Baily* Execution. —— He hath no Remorſe for the *Frequency of Executions at Tower Hill*; but alarms the whole Nation with the *Frequency of Executions at Tyburn*.

HE hath therefore made it neceſſary, to ſhew the Difference of one Reign, where the Lives of Lord *Ruſſel* and Sheriff *Corniſh* were barbarouſly taken away contrary againſt Law; and of another *Reign*, where the Death of a *Macray*, and the Condemnation of a *Wreathock*, are the *Severities* imputed to the Law.

In order to avoid an Anſwer to this, and to divert People from ſeeing the Truth of it, he wonders how I contrived to lug *Macray* and my Lord *Ruſſel*, *Wreathock* and Mr. *Corniſh*, into an Argument concerning *Smuggling* and the *Exciſe Laws*. But to cure him of ſuch Fits of Admoniſhment, I muſt tell him, that it is not to be conſider'd at; and this may be inſiſted on, becauſe he ſet out in his Argument, with a Charge againſt the Laws, for *their frequent and redundant Executions at Tyburn*; ſo that by Permiſſion, I may wonder in my Turn, how he can pretend, that the Lives of thoſe noble Patriots, and Numbers of other brave Men, moſt barbarouſly taken away by Proſecutions in Courts of Juſtice, have no Relation to the Buſineſs of *frequent Executions*. In Fact, the judicious Writer hath no Reproach to bring againſt Acts of Severity, however lawleſs or butcherly, which flowed from the Vengeance of a Court, reſolved to ſacrifice every Aſſertor of Liberty; but all his Indignation is poured out againſt the due Adminiſtration of Laws inforcing the Payment of thoſe Subſidies, which are neceſſary to ſupport the Liberties of the whole People, and reſtrain that Smuggling of Goods, which tends to the Damage of the Kingdom in general, as well as to the Ruin of every fair Trader.

I may therefore leave it with every indifferent Reader, as a Specimen of Profligacy peculiar to *Fog*, who hath repreſented this Government as ſuch, that no Man can ſafely truſt his Life, his Liberty or Property, under the Laws of this Kingdom, becauſe *Executions are ſo redundant at Tyburn*; and yet affirms, that it hath no Relation to the Argument, when I obſerve, that the Government is infinitely better, and the People infinitely ſafer at this Time, though *Macray* hath been hanged, and *Wreathock*, with his Brethren, condemn'd, than the Government or People were, when Lord *Ruſſel* and Sheriff *Corniſh* loſt their Heads for the *Proteſtant* Religion, and the Liberties of *England*.

ANOTHER Inſtance of his abandoned Inſincerity deſerves particular Notice.

HE had obſerved on the Law of *Scandalum Magnatum*, that if a Peer or a Biſhop, brought their Actions againſt any one who ſhould ſay, that this Biſhop had voted againſt a Bill for preventing Bribery and Corruption; or, that this Peer had obſtructed an Enquiry into the Frauds of a Great Monied Company, a *Jury* would probably give them unreaſonable Damages.

IN animadverting on this, I ſhew'd that the Law of *Scandalum Magnatum*, was, in many Inſtances, not unreaſonable, tho' I could not but obſerve, that JAMES DUKE OF YORK, *a known Papiſt*, did once recover no leſs than *One Hundred Thouſand Pounds* Damages, againſt one who ſaid he *was a Papiſt*.

Now, ſays *Fog*, 'Mr. *Walſingham*, —— in your 'firſt Paper on this Subject, you fall foul on me for 'ſeeming to diſapprove the Statute *de Scan. Mag.* and, 'in a ſubſequent Paper, you think fit to inveigh againſt 'it, and gave an Inſtance of Severity and Injuſtice 'which was the Effect of that Law. —— This is excel-'lently ridiculous!'

How is this ridiculous? —— Becauſe I ſhewed *Fog*'s Knavery and Impudence in ſuggeſting that a JURY of *Engliſh Freeholders* would give *unreaſonable* Damages upon an Action, which he cannot pretend any Peer or Biſhop to have brought; therefore do I contradict myſelf, when I ſhew, that a PACKED JURY *of* Popiſh *Miſcreants without Freeholds*, gave a villainous Verdict, and Damages to an enormous Exceſs, which were not, as he phraſes it, the *Effect of that Law*, but, as all Men know it to have been, the Abuſe and Perverſion of that Law? —— ——

MAY not the Law be very juſt, and reaſonable, and neceſſary, whilſt Actions grounded upon it, are fairly tried by the Country? And may it not be very properly urged, that the Grievance of it was only felt when the STUART Family, for the Extirpation of Liberty, and the Subverſion of the *Proteſtant* Religion, procured *Juries* to be infamouſly packed, and ſuborned Verdicts, which abuſed and perverted the Intention and End of the Law?

AND may not this then be a good and wholſome Law in a Reign, where Juries are not to be packed or ſuborned, but are guarded by the Law with greater Security than any Age, before the preſent, could boaſt of? May it not, *I ſay*, thus adminiſtered, have very juſt Effects, though (as *Fog* expreſſes it) Severity and Injuſtice were the Effects of it, when JAMES THE SECOND, openly avowing the Introduction of Popery, did, by the Force of Tyranny againſt Law, make it penal in ſuch a monſtrous Sum for a Man to ſay, *He was a Papiſt*?

IT is infamous, beyond Example, that *Fog* accuſes me of ſubſcribing to his Complaint againſt the Statute of *Scandalum Magnatum*; becauſe I obſerve, that *Charles* and *James the Second* committed great Oppreſſions by perverting the Law.

IT is not the *Law* that is to be complained of; —— it is the Perverſion and *Perverters* of that Law, which ought to be condemned, abhorred, and *ſtigmatized* to all ſucceeding Ages.

IF thoſe *Princes* had not proved *Tyrants*, the Law would have ſtood unimpeached; but becauſe they abuſed it, is the right Adminiſtration of it not to be reſtored?

THE *Statute of Treaſons* was a Law of a terrible kind, whilſt *ſcribere eſt agere* was a Doctrine laid down by *Charles the Second*'s Judges to maintain an *overt Act of Treaſon*. But becauſe that Prince put *Algernon Sidney* to Death, for Papers found in his Cloſet, ſuppoſed to be of his writing; do I, by deteſting this outrageous Act of Royal Wickedneſs, ſubſcribe to a Doctrine againſt the Proſecution of Traitors, or the Puniſhment of Treaſon?

NO; —— I may ſhew the Abuſe of the Law, to manifeſt the Neceſſity of excluding a Family from the Throne, who, whilſt they ſate in it, inceſſantly abuſed the Law. ——— I may ſhew the Abuſe of the Law in their Days, to manifeſt the Benefits of the Government adminiſtered by a ſubſequent Royal Family, protecting and maintaining the Law; —— and this is not ſaid in Reproach, but in Vindication of the Law, though *Fog* affirms, that becauſe I have ſhewn the *Stuarts* made a wicked Uſe of it; therefore I allow it to be a wicked Law: ——— Execrably villainous and abſurd!

I cannot but remember another Inſtance of his Profligacy.

HE had ſaid, that the Judges in other Countries might conſider how far any Crime was naturally illative of Puniſhment, which *Juries in England* cannot do; but every Man convicted of the Fact, muſt ſuffer the Rigour of the Law.

I anſwered to this, That where any Perſon was proceeded againſt in any other Country, upon the Edict of the Prince, or an Act of the State, he had as hard a Caſe of it, as any one tried here on the Act of a Parliament; and I inſtanced the *Edict in France* againſt Duelling. If one Man challenge, and kill another Man, on any Provocation, however natural or common, can the Judges who try him in *France*, admit of any Argument, in what Degree the Fact is naturally illative of Puniſhment? And muſt they not condemn him for *Murder*, according to the ſtrict Letter of the Edict, as rigorouſly as if he had been tried by any Law in *England*?

IN Reply to this, what ſays *Fog*? He ſays, that *Duels are againſt* the LAW OF GOD, *which ſuch Wits as* Walſingham *may make a* Jeſt *of*. And this, it ſeems, diſtinguiſhes the Edict againſt Duelling from other Laws, where the Offence condemned, may be differently puniſhed, according to its different Aggravations or Excuſes in particular Caſes.

DUELS then are againſt the Law of God. ——— How? Nothing is a Crime againſt the Law of God, which is not a Crime againſt the Law of Nature and Reaſon. Nor is any thing a *Law* at all, which is not agreeable to Nature, and warranted by Reaſon. All other Inſtitutions are Acts of Injuſtice and Oppreſſion. Now, *Duels*, or any other Occaſions of Death, are neither Murder, nor Offences againſt God, by any other Rule than Rapes or Robberies are Felonies, and Breaches of the Divine Law. The Good of Mankind in general, and the greateſt Good of each particular Man, conſiſtently with the Good of every one elſe, is the Law of Nature and Reaſon. Robbery, Murder, and Rebellion, are no otherwiſe Crimes, than as they are Violations of this univerſal Law; and *Duels* are no otherwiſe Violations of this Law, than *Theft* or Rapine, though they may be greater in Degree; as a Man's Life is of greater Value than his Property, and as the Loſs of his Life is ſuppoſed a greater Injury to him than the Loſs of his Fortune. If then Duels are no otherwiſe againſt the Law of God, than as every Crime againſt Mankind, is againſt that Law, how are Duels, or *Combats which enſue upon Challenge*, to be diſtinguiſhed as Crimes which are not to be conſidered by common Equity? Or why are theſe to be proſecuted with Rigour, without due Conſideration of that Puniſhment which the Fact itſelf may naturally infer, and reaſonably deſerve, according to the Manner and Circumſtances of it?

If this Writer muſt admit, that a Crime, *deſined* by the Edict of any Prince, and declared againſt by the Penalties of ſuch Edict, is as rigorouſly to be puniſhed, as a Crime defined by an *Engliſh* Statute; if he owns, that the Edict in *France* makes any *Death which is occaſioned by a Duel*, to be as certainly *Murder*, where the Duel was preceded by *Challenge*, as any Law in *England* can make it; if he cannot deny, that a Judge in *France* can mitigate ſuch an Offence from the Conſideration of concurring Circumſtances, no more than a Judge in *England*; he gives up the whole Debate. For a Man may be *provoked* to challenge another, and, in Conſequence, may put him to Death, yet ſtill be worthy to live, and allowed to live, if whatever may be *naturally* conſidered, might be *judicially* conſidered. But *Fog* hath made a lying Panegyrick on the Law of other Nations, to reproach the Laws of *England*, and hath ſaid, that Abroad the Judges conſider how far the Fact is naturally illative of Puniſhment: Which is true of the *Civil Law*, and not leſs true of our own *Common Law*; but is no more true of *Edicts*, or *Acts of State* in any other Country, than of Acts of Parliament in *England*.

There is not a Man of Senſe of any Party, who can read that Sentence in *Fog*, that 'Duels are againſt 'the *Law of God*, which ſuch Wits as *Walſingham* 'make a *Jeſt* of,' without that Indignation which Words are not ſtrong enough to expreſs. To draw the *Sacred* Name of Almighty God into his profane Diſpute; to load an Adverſary with the Imputation of making a Jest of this *Divine* Law, who had no-where been led, by any Occaſion, to expreſs himſelf in any Manner concerning it; and to aſſume this pious and religious *Awe of God* in Relation to Duels, amidſt many notorious Attempts, even to excite Aſſaſſinations: This whole Procedure is ſuch a Scene of *Profligacy*, *Impiety*, and *Badneſs of Heart*, as no Set of Men were ever to be reproached with, but the College of *Jeſuits at St. Omers*, or the *Privy Council* at Albano.

And ſince he ſays, that I do not expect to be believed concerning the barbarous Medal of *James the Second*, I do inſiſt, that he ſtruck ſuch a *Medal*, and that I ought to have Belief, becauſe I will bring Proof.

There is a Book, intitled, *Numiſmata*: A Diſcourſe of Medals ancient and modern. By J. Evelyn, Eſq; *S. R. S.* London, printed for *Benj. Tooke*, at the Middle Temple Gate in Fleet-ſtreet, 1697. *Folio.*

This Author hath preſerved all the Medals of the Stuarts, from no Malevolence to that Family, but every where expreſſes himſelf with the utmoſt Affection for their Perſons, and Zeal for their Cauſe, and Bitterneſs againſt their Enemies. Now, this Man is an Evidence, whoſe Partiality in Prejudice to *James the Second*, is not to be conceived or ſuggeſted.

In Book the Third, Page 149. he exhibits the Eighty-fifth Medal, which he deſcribes in theſe Words, *viz.*

'The King, in *Buſt*, crowned with Laurel, *&c.* 'placed upon a large *Baſis* or Altar; on the Front of 'which are the Arms of *England*, *&c.* within the 'Garter, and over it the Crown.

Exergue

Aras et Sceptra Tuemur.

'Upon the *Altar* lie four Sceptres bearing on their 'Tops the *Roſe*, *Lilly*, *Thiſtle* and *Harp*; upon each 'Side is repreſented the Sea, with God *Neptune*, hold-'ing the *Trident*, drawn in a Chariot by *Marine Horſes*, 'with two Veſſels under Sail on the other Side.

Inſcription.

'Jacobus II. D. G. Mag. Bri. Fran. et Hib. 'Rex. 1685.

Reverſe.

'*Juſtice* (upon whoſe Head the Sun darts his Beams, 'and Lightning iſſues out of a dark Cloud) with 'Sword and Balance, holds in one Scale *Mural Crowns*, 'which preponderate the other, in which there is a '*Scimiter*, a *Proteſtant Flail* (as then called) with a '*Serpent*, whilſt ſhe tramples on another Serpent, near 'two headleſs Bodies; their Heads lying on two 'Square Blocks, on each Side of Juſtice; on that of 'the Right Hand,

'Jacobus de Montmout.

'*On the Left*,

'*Archibald D'Argyll.*

'Upon one Side of the Carcaſes are repreſented 'Soldiers routed and flying away; on the other, a 'Caſtle, with two Heads fixed on Spikes over the Gate, 'and on the Pedeſtal,

Ambitio mala ſuada ruit.

I now call upon *Fog*, to ſhew why I may not expect to be believed. If he deſires to be ſatisfied further that his *Idol Monarch* had the Spirit of a *Butcher*, or rather of a *Cannibal*, I can from the next Page, ſhew him, in a ſecond Medal, *the Duke of Monmouth* breaking his Neck. At preſent leaving this Writer, to contemplate theſe Memorials of that unhappy Monarch's *Humanity*, I leave the Reader to determine, whether *Fog*, with great *Wit* or *Modeſty*, choſe to declaim againſt the *Lenity of the Laws of England*.

Fra. Walsingham.

LONDON.

We hear there will be a Reduction of 8000 Land Forces, and a conſiderable Number of Seamen.

On Wedneſday Evening there was a Meeting of the Burgeſſes and principal Inhabitants of the City and Liberty of Weſtminſter, when a Petition was agreed on to be delivered to Parliament, for Leave to bring in a Bill to erect a Bridge from Weſtminſter to Lambeth, which was ſigned by the Burgeſſes and other Gentlemen then preſent.

The Letters in the Grub-ſtreet Journals of the 28th of Auguſt, 11th September, 18th December laſt, relating to the Philoſopher's Prayer, will be taken into Conſideration, at the Oratory, on Sunday the 18th of this Inſtant January, in the Evening, and the Malice and Ignorance of the Authors expoſed, by the Gent. who ſo well defended the plain Account of the Sacrament on Sunday laſt; and it is deſired, that the Author or Authors of thoſe Letters may appear and defend them.

The Right Hon. the Lords Commiſſioners of the Treaſury have been pleaſed to appoint Mr. Lyons, a Surveyor of the Window Lights for the Tower Hamlets.

A Habeas Corpus is gone down to Peterborough, to fetch up Watts the Clerk at the India Houſe, who ran away with ſome India Bonds, in order for his Trial at the Old Baily Seſſions, which begin next Friday.

The Right Hon. the Lords Commiſſioners of the Admiralty have been pleaſed to order the Companies of the following of his Majeſty's Ships of War to be reduced to the Compliments of Guardſhips, viz. Blenheim, Dorſetſhire, Lancaſter, Ipſwich, Lenox, Monmouth, Yarmouth, Plymouth, Berwick, and Midway, at Portſmouth; and the Exter, Montagu, and Canterbury, at Plymouth; and Yeſterday they began at the ſaid Ports to pay the Wages due to the Men of the ſaid Ships, who are ordered to be diſcharged.

The Hon. William Conolly, Eſq; Member of Parliament for Aldborough in Suffolk, with his Lady, Daughter to the Right Hon. the Earl of Stafford, is arrived at his Seat in Staffordſhire, from Ireland.

The Oratory Subjects on Sunday next in the Morning, will be the Epiphany, the Three Kings, various Hiſtory and Criticiſm on its Solemnity. —— In the Evening the Oration, by Requeſt in the Oratory laſt Sunday, on Merlin, pronounced again, with Additions. Philalethes will deliver a Theſis at the publick Diſputation, 'Whether the Soul be material, according to our 'Ideas?' And the Gentleman who defended the plain Account of the Sacrament at the Oratory on Sunday laſt, will deliver a Theſis on January 18th Inſtant, on three Letters in the Grub-ſtreet Journals on the Philoſopher's Prayer, challenging the Authors to a Diſputation. —— On the ſame Evening will be an Oration on Monſieur Rollin's Parallel of the Scythians and Romans, in reſpect to the Letter of Philanthropos.

Yeſterday Bank Stock was 148 1-half. India 173. South Sea 95 1-4th. Old Annuity 111 to 1-8th. New ditto, 111 3-4ths. Three per Cent. 100 3-4ths. Emperor's Loan 111. Royal-Aſſurance 102 1-half to 103. London-Aſſurance 13 1-4th to 3-8ths. York Buildings 2. African 14. India Bonds 5l. 14s. to 15s. Prem. Three per Cent. ditto 3l. 18s. Prem. South Sea Bonds 4l. 19s. Prem. New Bank Circulation 5l. 10s. Prem. Salt Tallies 3 3-4ths to 4 1-4th Prem. Engliſh Copper 2l. 1s. Welſh ditto, Books ſhut. Three 1-half per Cent. Exchequer Orders 3 1-half per Cent. Prem. Million Bank 110.

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Regulus: A Pindarick Ode.
The Carmen Seculare of *Horace*; tranſlated by Mr. W. Duncombe.
Upon a Lady who faid ſhe loved to ſurprize.
The involuntary Sinner; a Tale.
An Epithalamium; by a Lady.
Prologue and Epilogue ſpoken at the Play of *Sophonisba*, acted by young Gentlemen and Ladies.
Verſes on the Memory of Mrs. *Oldfield*, ſpoken by Mrs. *Heron*.
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LONDON: Printed for T. Cooper, at the *Globe* in *Pater-noſter-Row.*